

eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under “Guideline I, Psychological Conditions.” Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO introduced eight numbered exhibits (Ex. 1–8) into the record and presented the testimony of the DOE psychologist. The Individual introduced three exhibits (Ex. A–C) into the record and presented the testimony of two witnesses, including himself.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline I, Psychological Conditions, as the basis for denying the Individual a security clearance. Ex. 1. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Guideline I at ¶ 27. The Notification Letter asserted that the DOE psychologist diagnosed the Individual with “cognitive deficits of unknown origin, which is an emotional, mental, or personality condition that can continue to impair judgement, reliability[,], or trustworthiness.” Ex. 1. An opinion by a duly qualified mental health professional that the Individual has a condition that may impair judgment, reliability, or trustworthiness justifies the LSO’s invocation of Guideline I in the Notification Letter. Guideline I at ¶ 28(b).

III. REGULATORY STANDARDS

The regulations require me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that restoring the individual’s access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

On an evening in June 2017, the Individual consumed five beers and two shots of bourbon. Ex. 7 at 14–15. While attempting to drive home, the Individual lost consciousness, and his vehicle veered off of the road and came to rest against a guardrail. *Id.* at 19–20. Law enforcement officers found the Individual unconscious and transported him to a detention center to determine if the Individual was intoxicated. *Id.* at 31–32. The results of the tests showed that the Individual’s breath alcohol concentration was over the legal alcohol limit, and the Individual was charged with Aggravated DWI. *Id.* at 34, 80. The Individual denied feeling impaired on the night in question, and attributed the incident to “[falling] asleep on the road.” *Id.* at 17, 89–90; *see also* Ex. 5 at 3. Based on this incident, the LSO required that the Individual submit to an evaluation from the DOE psychologist concerning his alcohol consumption. *See* Ex. 5 at 1.

After evaluating the Individual, the DOE psychologist concluded that the Individual suffered from “cognitive deficits of unknown origins that can impair his judgment and reliability.” *Id.* at 8. The DOE psychologist based his conclusions on the results of three subtests of the Wechsler Adult Intelligence Scale-Revised (WAIS-R),² the Minnesota Multiphasic Personality Inventory (MMPI), and a clinical interview during which the Individual described pertinent personal history, including the fact that he was a passenger in a car accident which resulted in his sister’s death. *Id.* at 5, 6–7. The DOE psychologist determined that the Individual’s responses to inquiries were extremely concrete and demonstrated poor general knowledge, the Individual had significant difficulty thinking abstractly, and the Individual minimized his problems to such an extent that it cast doubt on his truthfulness. *Id.* at 6. The DOE psychologist stated that the Individual would occasionally exercise poor judgment because his “decision making will be based on his sense of immediate facts with little anticipation of the ramifications.” *Id.* at 8. The DOE psychologist also stated that the Individual’s extreme levels of claimed virtuousness on the MMPI called into question his trustworthiness. *Id.* at 6–7.³

The Individual offered testimony from himself and his immediate supervisor, as well as letters entered into evidence, demonstrating that he is competent to perform his job and is, in many respects, an exemplary employee. *See* Tr. at 15, 28; *see also* Exs. A, C. The supervisor testified that the Individual is a very reliable and trustworthy employee who has become one of the supervisor’s “go-to guys.” Tr. at 17. The supervisor also testified that the Individual is responsible for the safety of other workers and making sure other workers comply with security prohibitions. *Id.* at 18-19. Additionally, the Individual offered a letter from a Licensed Clinical Social Worker (LCSW) who opined that the Individual did not appear to suffer from an emotional, mental, or personality condition. Ex. B at 2.

After listening to all of the testimony offered during the hearing, including that of the Individual, the DOE psychologist testified that he remained of the opinion that the Individual suffers from cognitive deficits of an unknown origin that can impair his judgment and reliability. Tr. at 81-82. However, the psychologist modified his opinion by stating that the Individual’s condition could

² The WAIS-R test is composed of eleven subtests which measure adult intelligence, in the manner of an “IQ” test. The DOE psychologist only subjected the Individual to the Information, Vocabulary, and Similarities subtests. Ex. 5 at 6.

³ The Individual reported on the MMPI that he is always truthful, never gets angry, and likes everyone. Ex. 5 at 6.

be mitigated if the Individual is within a “very structured” environment. *Id.* The psychologist also clarified that the Individual’s condition does not present concerns regarding the Individual’s trustworthiness. *Id.* at 111-12, 119.

V. ANALYSIS

An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness may raise a security concern. Guideline I at ¶ 28(b). In this case, the DOE psychologist stated his opinion that the Individual suffers from cognitive deficits of an unknown origin that can impair his judgment and reliability. Ex. 5 at 8; Tr. at 81. The Individual did not present any expert testimony to undermine the DOE psychologist’s methodology or opinion.

Although DOE did not refer the Individual to the DOE psychologist for an evaluation of intellectual functioning, the DOE psychologist subjected the Individual to three subtests of the WAIS-R based on the Individual’s difficulty understanding the DOE psychologist’s questions concerning his alcohol consumption and the concreteness of the replies that he offered.⁴ Ex. 5 at 6. The DOE psychologist evaluated and scored the Individual’s responses to the WAIS-R subtests, which indicated the Individual’s “very poor general knowledge,”⁵ “his extreme concreteness,”⁶ and his “difficulty thinking abstractly.” *Id.*⁷ The DOE psychologist further explained that the “results suggest that [the Individual] is impaired in his ability to function in an unsheltered world,” and “people within his range of functioning have a propensity to not consider all of the options when faced with a decision and are often unlikely to consider anything beyond the immediate situation.” *Id.* At the hearing, the DOE psychologist testified that the Individual’s lack of ability to perceive his own intoxication on the night of his arrest for Aggravated DWI, to recognize the dangers of driving while drunk in light of the death of his sister in a car accident, or to obey the law in the absence of supervision, illustrate the Individual’s impaired judgment. Tr. at 78–79.

The DOE psychologist’s opinion that the Individual suffers from “cognitive deficits of unknown origin that can impair his judgment and reliability” is supported by the record and therefore raises security concerns. Guideline I at ¶ 28(b). The Individual may mitigate these security concerns by showing that:

⁴ The DOE psychologist testified that it is common practice among psychologists to draw clinical conclusions from incomplete WAIS-R tests. Tr. at 90–91, 115–17. The Individual did not offer any testimony concerning the merits of a clinical evaluation based on incomplete WAIS-R testing.

⁵ For example, “when asked on what continent was Brazil [the Individual] responded that he did not know since he did not do well in history.” Ex. 5 at 6.

⁶ For example, the Individual defined the word “breakfast” as “bacon and eggs.” *Id.* When prompted to talk more about breakfast, the Individual repeated “eggs and bacon.” Tr. at 107. The DOE psychologist explained that similar answers throughout the testing demonstrated the Individual’s concreteness. *See id.* at 68, 107.

⁷ When prompted during the hearing, the Individual offered comparable responses to those the DOE psychologist relied upon in the report. *See* Tr. at 33.

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) [a] recent opinion by a duly qualified mental health professional . . . [demonstrates] that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past emotional instability was a temporary condition . . . , the situation has been resolved, and the individual no longer shows indications of emotional instability; or,
- (e) there is no indication or a current problem.

Id. at ¶ 29(a)–(e).

None of the above criteria apply in this case. The DOE psychologist opined that the Individual's condition is not amenable to treatment or change. Tr. at 74. The Individual did not offer expert testimony challenging the DOE psychologist's findings or providing an alternative prognosis.⁸ Nor did the Individual offer any evidence to the effect that he is pursuing treatment for his condition. Consequently, I find that the Individual continues to suffer from a condition that may impair his judgment and reliability, and that the Individual has not demonstrated the mitigation of such condition through any of the criteria set forth in Guideline I. *See Personnel Security Hearing*, OHA Case No. PSH-15-0078 (2015) (denying the restoration of a clearance to an individual who suffered from a potentially untreatable neurocognitive disorder, diagnosed as such by a DOE psychologist, which may cause a significant defect in judgment or reliability).⁹

The record clearly shows that the cognitive deficits from which the DOE psychologist determined that the Individual suffers do not prevent the Individual from satisfactorily performing his work for the DOE contractor. *See* Tr. at 15, 28; *see also* Ex. A, Ex. C. Furthermore, the Individual's testimony at the hearing described his work environment as an extremely structured one in which he need do little more than closely follow his supervisor's instructions to avoid negative consequences. *See id.* at 26–27, 41–43, 46–47.¹⁰ However, “reliability on the job do[es] not overcome [unmitigated] security concerns” *See Personnel Security Hearing*, OHA Case No. TSO-0358 (2006) (discussing why an Individual's history of reliability at work does not mitigate security concerns and noting that “[t]he fact that [an adverse security event] apparently has not occurred in the past is no guarantee that it will not occur in the future”). Furthermore, the

⁸ Although the LCSW's letter opined that the Individual did not suffer from an emotional, mental, or personality condition, the Individual did not offer information concerning the LCSW's credentials to qualify her as an expert. Furthermore, the LCSW's letter provides little information as to how the LCSW reached her conclusions. Therefore, I assigned minimal evidentiary weight to the LCSW's letter. However, even if I were to accept the LCSW as an expert, I would still find the DOE psychologist's opinion to be more persuasive.

⁹ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

¹⁰ When asked during the hearing what sorts of decisions he has made in the past using his independent judgment, the Individual struggled to offer a specific example. *See* Tr. at 39–43, 46–48.

obligations of a security clearance do not adhere to a particular location, but rather follow the holder in all facets of life.

As stated above, it is the Individual's burden to come forward with evidence to convince me that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." Based on the specific record developed in this case, I have a doubt regarding the Individual's ability to appreciate and satisfy the significant obligations imposed by the possession of a security clearance. Based on the foregoing, I conclude that the Individual has not resolved the security concerns associated with Guideline I.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline I. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

James P. Thompson, III
Administrative Judge
Officer of Hearings and Appeals